SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS6002/17

Applicant: **NEW ACLAND COAL PTY LTD ACN 081 022 380**

AND

Respondent: **PAUL ANTHONY SMITH, MEMBER OF THE LAND COURT OF QUEENSLAND**

OUTLINE OF ARGUMENT BY OCAA OPPOSING THE APPLICANT'S APPLICATION FOR A STAY AND INTERLOCUTORY INJUNCTIONS

LIST OF MATERIAL TO BE READ

1. The Oakey Coal Action Alliance Inc (**OCAA**) seeks leave to read and file the following material:

   (a) affidavit of Michael Craig Berkman affirmed 22 June 2017;

   (b) affidavit of Paul King affirmed 23 June 2017;

   (c) affidavit of Tanya Merilyn Plant affirmed 23 June 2017.

OUTLINE OF ARGUMENT

Background

2. The principal proceedings concern a judicial review application[1] against the Respondent's decisions to recommend under s 269 of the *Mineral Resources Act 1989* (**MRA**) that two applications for mining leases be rejected and to recommend under s 190 of the *Environmental Protection Act 1994* (**EPA**) that an application for an amendment to an existing environmental authority be refused for Stage 3 of the New Acland Coal Mine (**the decisions**).[2]

[1] The Application for a Statutory Order of Review and Application for Review (No. BS6002/17).
[2] The Respondent's lengthy and detailed reasons for the decisions were stated in *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, DEHP (No. 4)* [2017] QLC 24 (exhibit MGZ-1 to the affidavit of Mark Andrew Geritz read by the Applicant).

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3. The decisions followed an enormous hearing before the Respondent. The hearing took almost 100 sitting days, during which almost 2,000 exhibits containing many tens of thousands of pages of material, and well in excess of 2,000 pages of submissions were received by the court.[3] 28 expert and 38 lay witnesses gave evidence across multiple topics.[4]

4. The Respondent's decisions are not themselves binding, but merely provide *recommendations* to the Minister administering the MRA on the applications for mining leases[5] and to the administering authority on the application to amend the Applicant's existing environmental authority under the EPA.[6]

5. Notably, the administering authority (the Chief Executive administering the EPA[7]) (**the Chief Executive**) was a party to the hearing before the Respondent[8] and makes the final decision on whether to grant the application for an amendment of the environmental authority.[9] Given this, even if there were substance in the allegations made in the judicial review application, many of which involve merits issues rather than matters that are amenable to judicial review, the Chief Executive is fully informed of the evidence before the Respondent and the conduct of the hearing before the Respondent and, consequently, is the appropriate person to address those matters.

Application for a "stay" is misnamed

6. Late yesterday, 22 June 2017, the Applicant informed the respondents that it now seeks a revised form of orders than identified in its Application. It is, however, instructive to examine the original form of the orders sought in the Application to understand the effects now obscured in the revised form of orders sought.

7. The Applicant's interlocutory application for a "stay" is misnamed. In the orders sought in the Application, only the first of the four orders sought represent a stay in any conventional sense of the term. Even for that order "operation" of the decisions sought to be "suspended" is problematic as the decisions themselves have no "operation" – while they are a necessary step in the application processes, they are mere recommendations and allow the applications to proceed to final determination under the MRA and EPA. The final decision-makers under the MRA and the EPA are not bound to follow the Respondent's recommendations.

8. The second, third and fourth orders sought in the Application seek interlocutory injunctions restraining the Minister administering the MRA and the Chief Executive administering the EPA from fulfilling their functions and exercising their powers in the assessment of the

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[3] *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, DEHP (No. 4)* [2017] QLC 24 at [19].
[4] *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, DEHP (No. 4)* [2017] QLC 24 at [103]-[112].
[5] See MRA, s 269(2).
[6] See EPA, s 190(1).
[7] "Administering authority" is relevantly defined in Sch 4 (Dictionary) of the EPA as "the chief executive". Pursuant to s 33(11) of the *Acts Interpretation Act 1954* this is the Chief Executive of the department administering the EPA.
[8] Pursuant to EPA, s 186(a).
[9] Pursuant to EPA, s 194.

Applicant's applications under the MRA and EPA.[10] Relevant provisions of the MRA and EPA are set out in Attachment A and Attachment B to these submissions.

9. The functions and powers sought to be restrained in the Application are:

   (a) The decision of the Minister for State Development and Minister for Natural Resources and Mines (**the Minister**)[11] as the responsible minister under s 271A of the MRA, after considering the criteria under s 271 for the mining lease applications, to:

      (i) grant the Applicant's two applications for mining leases for the whole or part of the land in the proposed lease area; or

      (ii) reject the applications; or

      (iii) refer the matter to the Land Court to conduct a hearing or further hearing on the application generally or on specific matters raised by the Minister.

   (b) The advice under s 193(3) of the EPA from the Minister that the Minister considers may help the Chief Executive to make a decision under s 194 of the EPA.

   (c) The final decision on the application to amend the environmental authority by the Chief Executive (or their delegate[12]) under s 194 of the EPA, which must be either:

      (i) that the application be approved on the basis of the draft environmental authority for the application;

      (ii) that the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or

      (iii) that the application be refused.

10. The revised orders sought by the Applicant, as advised by its solicitors late on 22 June 2017, are:

> 1. The operation of the decision of the Respondent made on 31 May 2017 as recorded in the Land Court of Queensland decision *New Acland Coal Pty Ltd v Ashman & Ors and Chief Executive, Department of Environment and Heritage Protection (No. 4)* [2017] QLC 24 (**Decision**) and any subsequent orders of the Respondent (including relating to costs) following the Decision, be suspended until the final determination of these proceedings, with the effect that:
>
>   (a) the exercise of any related statutory power under section 271A of the Mineral Resources Act 1989 and sections 193(2) and 194 of the Environmental Protection Act 1994; and

[10] While the power in s 48 of the JRA does not appear to extend to making interlocutory orders against non-parties, r 658 of the *Uniform Civil Procedure Rules 1999* provides a broad power to "… at any stage of a proceeding, on the application of a party, make any order, including a judgment, that the nature of the case requires."
[11] These ministries are currently administered by a single Minister who in turn is responsible for the administration of the MRA and the *State Development and Public Works Organisation Act 1971*.
[12] EPA, s 516, allows the Chief Executive to delegate their powers under the Act.

(b) the exercise of any power by the Respondent to issue further orders in the proceedings the subject of the Decision,

are stayed for that period.

2. The Second Respondent pay the Applicant's costs of the application.

11. The revised form of orders sought by the Applicant obscures what was previously clearer in the original form of the orders. While the revised form of orders sought do not name the Minister or the Chief Executive, the revised orders are still directed at the performance of functions and exercise of powers by the Minister and the Chief Executive who are not parties to the proceedings. The Respondent does not exercise any power under s 271A of the MRA, or ss 193(2) and 194 of the EPA. The Respondent has no further powers to exercise in relation to the applications, save potentially a power to award costs.

12. It is the Minister who exercises the power under s 271A of the MRA and s 193(3) of the EPA and it is the Chief Executive who exercises the power under s 194 of the EPA. The nature of the revised form of orders sought still seeks, in effect, interlocutory injunctions restraining the Minister and the Chief Executive from performing their functions and exercising their powers as required by the MRA and EPA.

13. Other aspects of the revised form of the orders remain problematic or create new problems.

14. An issue that remains problematic is the reference to suspending the "operation" of the Respondent's decisions. As noted earlier, the Respondent's decisions under s 269 of the MRA and s 190 of the EPA are non-binding recommendations that do not have an "operation" in terms of deciding any legal rights or imposing any obligations. The final decision-makers under the MRA and the EPA must consider the decisions but are not bound to follow the Respondent's recommendations.

15. A new problem with the revised orders is that they fail to expressly identify who they apply to in circumstances where the people who are restrained from carrying out their statutory functions and exercising their powers, the Minister and the Chief Executive, are not parties to the proceedings. Orders in the nature of interlocutory injunctions should clearly identify who they apply to and what is required to be done to comply with the order.

Application for a stay and interlocutory injunctions should be refused

16. Given the nature of the application, the Applicant must show:[13]

(a) there is a serious question to be tried as to their entitlement to the final relief sought by the application for judicial review;

(b) that the Applicant is likely to suffer injury for which damages will not be an adequate remedy if the interlocutory relief sought is not granted; and

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[13] *ABC v O'Neill* (2006) 227 CLR 57; *Gibson & Ors v The Minister for Finance, Natural Resources and the Arts & Anor* [2011] QSC 401.

(c) the balance of convenience favours maintaining the status quo pending the final determination of the application.

17. OCAA submits that the Applicant's case is very weak and, ultimately, is likely to be dismissed, fundamentally because it is a merits case thinly veiled as a judicial review case. However, the scope of the grounds and the enormous scale of the hearing below before the Respondent mean that it is difficult for the Court to reach a preliminary decision on this. Without conceding there is any merit in the grounds of the application, OCAA accepts there is a serious question to be tried.

18. The application for a stay and interlocutory injunctions should be dismissed, however, because:

(a) the Applicant is not likely to suffer injury if the applications under the MRA and EPA are allowed to continue their normal course to final determination; and

(b) the balance of convenience favours allowing the applications to continue on their normal course to final determination rather than restraining the Minister and Chief Executive from carrying out the functions assigned to them by the MRA and the EPA.

19. The Minister and the Chief Executive are not bound by the Respondent's recommendations and the weight that they give to the Respondent's reasons is a matter for them.

20. The assumption or implication that underpins the Applicant's case for the stay and interlocutory injunctions is that the Minister and the Chief Executive:

(a) are unable to perform the functions assigned to them by the MRA and EPA; or

(b) may be misled by the Respondent's decisions in performing those functions.

21. This assumption or implication is incorrect, particularly in circumstances where:

(a) The Minister stated publicly in relation to the application for the mine and the Respondent's determination:

> "It will take me about six to eight weeks to go through the Land Court determination. I look at all these things carefully.
>
> "With the Adani Coal Mine, I looked through every page over a matter of weeks.
>
> "I'll be taking care with all the documents until I can make sure that I agree with what the Land Court is saying.
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> "The Land Court process is a rigorous process that I thoroughly respect."[14]

(b) The Applicant is entitled to make submissions directly to the Minister and the Chief Executive explaining what, in the Applicant's view, are the errors in the Respondent's recommendations and reasons.

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[14] Quoted in a news article in the *Toowoomba Chronicle*, published on 21 November 2016 prior to the Respondent's decision. The article is exhibit TMP-1 to the affidavit of Tanya Merilyn Plant, affirmed 23 June 2017.

(c) The Minister and the Chief Executive are entitled to be informed by their respective departments about the Respondent's decisions and reasons and, therefore, can be expected to be properly informed of the merit or otherwise of:

(i) the conduct of the hearing before the Respondent;

(ii) the Respondent's decisions and reasons; and

(iii) the Applicant's criticisms of the Respondent's conduct, decisions and reasons.

(d) The Chief Executive's department was a party to the entire hearing in the Land Court before the Respondent and, therefore, is uniquely placed to be properly informed of the merit or otherwise of:

(i) the conduct of the hearing before the Respondent;

(ii) the Respondent's decisions and reasons; and

(iii) the Applicant's criticisms of the Respondent's conduct, decisions and reasons.

22. Further, the Applicant has not demonstrated in its evidence that it will suffer irreparable harm if the stay and injunctions are not granted pending the resolution of the principal proceedings seeking judicial review of the Respondent's decisions. The Applicant's solicitor, Mr Geritz, points to no prejudice under the statutory framework, merely that "there is no impediment" to the Minister and the Chief Executive carrying out their functions under the MRA and EPA.[15] The CEO of the Applicant's parent company, Mr Boyd, does not state a specific timeframe for when the existing mine's coal reserves will expire to the extent jobs are lost.[16] The timeframe appears to be greater than the 21-22 months required for construction work on the mine extension.

23. Weighing against delay in the Minister and the Chief Executive making final decisions on the applications for the mine extension under the MRA and the EPA is the ongoing uncertainty and distress to the community affected by the mine of delaying the decisions. OCAA's President, Mr King, states that:

> "… the ongoing uncertainty caused by NAC's applications for judicial review and a stay of the Land Court's decisions and state government final decision powers is adversely affecting a number of locals, in that it is causing distress and is affecting the business planning of local farmers."[17]

24. Ms Plant, who is a farmer in the local community and was an objector before the Land Court, states:

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[15] Affidavit of Mark Andrew Geritz, sworn 15 June 2017, at [8]-[9].

[16] Affidavit of Andrew Lachlan Boyd, sworn 14 June 2017.

[17] Affidavit of Paul King affirmed 23 June 2017 at [11].

> "I am concerned that delay in the decisions on the MLAs and the EA will have an adverse impact on my family and our business and also, I believe, on the ongoing and increasing division within the community.
>
> … The prolonged uncertainty regarding the proposed stage 3 mine and the impacts it may cause us have been stressful."[18]

25. In weighing the balance of convenience it is also relevant to note that, even if the applications for the mining leases under the MRA and the application for the amendment of the environmental authority under the EPA are decided before the Court decides the principal proceedings, the Court can still proceed to hear the principal application and, if necessary, set aside the decisions of the Respondent.

26. If the applications under the MRA and EPA are decided before the principal proceedings are resolved and approved on terms acceptable to the Applicant, then the concerns raised in the Applicant's affidavits will not arise and the principal proceedings will lack utility.

27. If the applications under the MRA and EPA are decided before the principal proceedings are resolved in terms unacceptable to the Applicant, such as the Minister and/or the Chief Executive refuse the applications, the Applicant can amend its application in the principal proceedings to either join the Minister and/or Chief Executive or commence separate proceedings against them, thereby allowing the ultimate decisions to be set aside, if necessary.[19] The Court of Appeal has previously set aside decisions of the then tribunal hearing objections to mining leases under the MRA and environmental authorities under the EPA after the mining lease and environmental authority were granted.[20]

28. In the circumstances the balance of convenience favours allowing the Minister and Chief Executive to perform the functions and to exercise the powers granted to the under the MRA and EPA.

29. Therefore, the Applicant's application for a stay and interlocutory injunctions should be dismissed.

Dr Chris McGrath
Counsel for OCAA
23 June 2017

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[18] Affidavit of Tanya Merilyn Plant, affirmed 23 June 2017, at [8]-[9], see also [10]-[12].

[19] As was done in *Coast and Country Association of Queensland Inc v Smith & Anor; Coast and Country Association of Queensland Inc v Minister for Environment and Heritage & Ors* [2015] QSC 260 (Douglas J).

[20] See *Queensland Conservation Council Inc v Xstrata Coal Queensland Pty Ltd* [2007] QCA 338; (2007) 155 LGERA 322; (2007) 98 ALD 483; and *Queensland Conservation Council Inc v Xstrata Coal Queensland Pty Ltd & Ors* [2007] QLC 128 at [5]-[7].

ATTACHMENT A – EXTRACTS FROM MRA (ss 265-271A)

265 Referral of application and objections to Land Court

(1) Subsections (2) and (3) apply if—

(a) a properly made objection is made for an application for a mining lease; and

(b) the application for the mining lease relates to an application under the Environmental Protection Act, section 125 for an environmental authority for a mining activity relating to a mining lease; and

(c) either—

(i) an objection notice relating to the application for the environmental authority is given under the Environmental Protection Act, section 182(2) to the EPA administering authority; or

(ii) the applicant for the environmental authority has requested, under the Environmental Protection Act, section 183(1), that the application for the environmental authority be referred to the Land Court.

(2) The chief executive must refer the following to the Land Court for hearing—

(a) the application for the mining lease;

(b) all properly made objections for the application for the mining lease;

(c) all objection notices, relating to the application for the environmental authority, given under the Environmental Protection Act, section 182(2);

(d) if the applicant for the environmental authority has requested the EPA administering authority to refer the application to the Land Court under the Environmental Protection Act, section 183—a copy of the request.

(3) The chief executive must make the referral within 10 business days after the latest of the following—

(a) the last objection day for the application for the mining lease;

(b) if an owner of land may lodge an objection under section 260(2)—the last day of the period for lodging an objection under that subsection;

(c) the last day on which the application for the environmental authority may be referred to the Land Court under the Environmental Protection Act, section 185(2).

(4) Subsections (5) and (6) apply if—

(a) a properly made objection is made for an application for a mining lease; and

(b) the application for the mining lease does not relate to an application under the Environmental Protection Act, section 125 for an environmental authority for a mining activity relating to a mining lease.

(5) The chief executive must refer the application for the mining lease, and all properly made objections for the application, to the Land Court for hearing.

(6) The chief executive must make the referral within 10 business days after the later of the following—

(a) the last objection day for the application for the mining lease;

(b) if an owner of land may lodge an objection under section 260(2)—the last day of the period for lodging an objection under that subsection.

(7) If the Land Court receives a referral under subsection (2) or (5), the Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the chief executive;

(b) the applicant for the mining lease;

(c) a person who has lodged a properly made objection for the application for the mining lease;

(d) a person who has given to the EPA administering authority, under the Environmental Protection Act,

section 182(2), an objection notice relating to the application for the environmental authority.

(8) The hearing date must be at least 20 business days after the last objection day for the application for the mining lease.

(9) The Land Court may make an order or direction that a hearing under section 268 for an application for the grant of a mining lease and any objections to the grant happen at the same time as an objections decision hearing under the Environmental Protection Act, section 188 relating to the application for the mining lease.

(10) If the Land Court fixes a date for the hearing and all properly made objections are struck out under section 267A or withdrawn before the hearing starts, the Land Court may remit the matter to the chief executive.

(11) In this section—

properly made objection means an objection lodged under section 260 that has not been withdrawn.

266 Chief executive may recommend rejection of application for noncompliance

If, at any time after a mining lease notice is given for a mining lease, the chief executive is of the opinion that an applicant for the grant of the mining lease has not complied with any requirement placed upon the applicant by or under this Act in respect of the application, the chief executive may recommend to the Minister that the application be rejected.

267 Minister may reject application at any time

The Minister, whether or not the chief executive has so recommended, may at any time reject an application for the grant of a mining lease notwithstanding that the application has not been the subject of a hearing by the Land Court if—

(a) the Minister is satisfied that the applicant has not complied with any requirement placed upon the

applicant by or under this Act in respect of the application; or

(b) the Minister considers that it is not in the public interest for the mining lease to be granted.

267A Striking out objections

(1) This section applies to the extent an objection lodged under section 260 is—

(a) outside the jurisdiction of the Land Court; or

(b) frivolous or vexatious; or

(c) otherwise an abuse of the process of the Land Court.

(2) Despite sections 265 and 268, the Land Court may, at any stage of the hearing, strike out all or part of the objection.

268 Hearing of application for grant of mining lease

(1) On the date fixed for the hearing of the application for the grant of the mining lease and objections thereto, the Land Court shall hear the application and objections thereto and all other matters that pursuant to this part are to be heard, considered or determined by the Land Court in respect of that application at the one hearing of the Land Court.

(2) At a hearing pursuant to subsection (1) the Land Court shall take such evidence, shall hear such persons and inform itself in such manner as it considers appropriate in order to determine the relative merits of the application, objections and other matters and shall not be bound by any rule or practice as to evidence.

(3) The Land Court shall not entertain an objection to an application or any ground thereof or any evidence in relation to any ground if the objection or ground is not contained in an objection that has been duly lodged in respect of the application.

(4) The Land Court may direct an inspection or view of the land the subject of the application.

(5) Nothing in subsection (1) shall prevent the adjournment from time to time of a hearing.

(6) Nothing in subsection (1) shall prevent the question of compensation being determined by the Land Court pursuant to section 279.

(7) The Minister may require at any time the Land Court to advise the reasons why a hearing under this section has not been finalised.

(8) The Land Court on the application of an objector or owner may award costs against an applicant for a mining lease who abandons the application or does not pursue the application at a hearing.

(9) The Land Court on the application of an applicant for a mining lease may award costs against an objector who withdraws the objection or does not pursue the objection at a hearing.

(10) In this section—

application includes any additional document about the application given by the applicant to the chief executive.

269 Land Court's recommendation on hearing

(1) Upon the hearing by the Land Court under this part of all matters in respect of an application for the grant of a mining lease, the Land Court shall forward to the Minister—

(a) any objections lodged in relation thereto; and

(b) the Land Court's recommendation.

Note—

For other relevant provisions about forwarding documents, see section 386O.

(2) For subsection (1)(b), the Land Court's recommendation must consist of—

(a) a recommendation to the Minister that the application be granted or rejected in whole or in part; and

(b) if the application relates to land that is the surface of a reserve and the owner of the reserve has not consented to the grant of a mining lease over the surface area, the following—

(i) a recommendation to the Minister as to whether the Governor in Council should consent to the grant over the surface area;

(ii) any conditions to which the mining lease should be subject.

(3) A recommendation may include a recommendation that the mining lease be granted subject to such conditions as the Land Court considers appropriate, including a condition that mining shall not be carried on above a specified depth below specified surface area of the land.

(4) The Land Court, when making a recommendation to the Minister that an application for a mining lease be granted in whole or in part, shall take into account and consider whether—

(a) the provisions of this Act have been complied with; and

(b) the area of land applied for is mineralised or the other purposes for which the lease is sought are appropriate; and

(c) if the land applied for is mineralised, there will be an acceptable level of development and utilisation of the mineral resources within the area applied for; and

(d) the land and the surface area of the land in respect of which the mining lease is sought is of an appropriate size and shape in relation to—

(i) the matters mentioned in paragraphs (b) and (c); and

(ii) the type and location of the activities proposed to be carried out under the lease and their likely impact on the surface of the land; and

(e) the term sought is appropriate; and

(f) the applicant has the necessary financial and technical capabilities to carry on mining operations under the proposed mining lease; and

(g) the past performance of the applicant has been satisfactory; and

(h) any disadvantage may result to the rights of—

(i) holders of existing exploration permits or mineral development licences; or

(ii) existing applicants for exploration permits or mineral development licences; and

(i) the operations to be carried on under the authority of the proposed mining lease will conform with sound land use management; and

(j) there will be any adverse environmental impact caused by those operations and, if so, the extent thereof; and

(k) the public right and interest will be prejudiced; and

(l) any good reason has been shown for a refusal to grant the mining lease; and

(m) taking into consideration the current and prospective uses of that land, the proposed mining operation is an appropriate land use.

(5) Where the Land Court recommends to the Minister that an application for the grant of a mining lease be rejected in whole or in part the Land Court shall furnish the Minister with the Land Court's reasons for that recommendation.

(6) If—

(a) the application is for the grant of a coal mining lease; and

(b) under section 318BA, a preference decision is required;

the Land Court can not recommend that the lease not be granted so as to give preference to petroleum development.

271 Criteria for deciding mining lease application

In considering an application for the grant of a mining lease, the Minister must consider—

(a) any Land Court recommendation for the application; and

(b) the matters mentioned in section 269(4).

271A Deciding mining lease application

(1) The Minister may, after considering the criteria under section 271 for a mining lease application, decide to—

(a) grant the applicant a mining lease for the whole or part of the land in the proposed lease area; or

(b) reject the application; or

(c) refer the matter to the Land Court to conduct a hearing or further hearing on the application generally or on specific matters raised by the Minister.

(2) However, a mining lease may only be granted for land that is the surface of a reserve if—

(a) the owner of the land has given written consent to the grant over the surface area and the applicant has lodged the consent with the chief executive; or

(b) the Governor in Council has consented to the grant over the surface area.

Note—

If the application relates to acquired land, see also section 10AAC.

(3) Also, a mining lease may only be granted for land below the surface of the whole or part of a reserve that is rail corridor land if—

(a) the owner of the land has given written consent to the grant for the land below the surface and the applicant has lodged the consent with the chief executive; or

(b) the Governor in Council has consented to the grant for the land below the surface.

(4) If a mining lease is granted for only part of the land, the application is taken to have been rejected for the rest of the land.

271B Steps to be taken after application decided

(1) This section applies if a mining lease is rejected in whole or in part or the Minister refers the matter to the Land Court (the ***referral***).

(2) The Minister must, as soon as practicable, give the applicant a written notice stating the rejection or the referral and the reasons for it.

272 Minister may remit to Land Court for additional evidence

(1) This section applies if the Minister, under section 271A(1)(c), refers the matter to the Land Court.

(2) The Land Court must fix a date for the hearing and immediately give written notice of the date to each of the following—

(a) the chief executive;

(b) the applicant;

(c) each person who has lodged an objection to the application in accordance with section 260.

(3) The date must be at least 20 business days after the day the Land Court fixes the date.

273 Restriction on grant of mining lease that does not include surface of land

A mining lease over land shall not be granted unless—

(a) it includes such an area of the surface of that land; or

(b) where it does not include an area of the surface of that land, the applicant is the holder of such an adjoining mining lease;

ATTACHMENT B – EXTRACTS FROM EPA (ss 265-271A)

183 Applicant may request referral to Land Court

(1) The applicant may, by written notice to the administering authority, request that the administering authority refer the application to the Land Court.

(2) The request must be given to the administering authority within 20 business days after the notice under section 181(1) is given.

(3) This section does not apply for a decision made by the administering authority to refuse an application under section 173(1).

Subdivision 3 Referrals to Land Court

184 Application of sdiv 3

This subdivision applies to an application for a mining activity relating to a mining lease if—

(a) an objection notice for a submission about the application is given to the administering authority under section 182(2); or

(b) the applicant has requested under section 183(1) that the application be referred to the Land Court.

185 Referral to Land Court

(1) The administering authority must refer the application to the Land Court for a decision under this subdivision (the ***objections decision***), unless the application is referred to the Land Court under the Mineral Resources Act, section 265.

(2) The referral must be made within 10 business days after (but not before) the last day on which an objection notice for the application may be given to the administering authority under subdivision 2.

(3) The referral must be made by filing with the registrar of the Land Court—

(a) a notice, in the approved form, referring the application to the Land Court; and

(b) a copy of the application; and

(c) a copy of any response to an information request; and

(d) a copy of any submission for the application; and

(e) a copy of the notice given under section 181(1), including any draft environmental authority for the application; and

(f) a copy of any objection notice given under section 182(2); and

(g) a copy of any request for referral made by the applicant under section 183.

(4) The referral starts a proceeding before the Land Court for it to make the objections decision.

186 Parties to Land Court proceedings

The parties to the Land Court proceeding are as follows—

(a) the administering authority;

(b) the applicant;

(c) any objector for the application;

(d) anyone else decided by the Land Court.

187 Notice of referral

The administering authority must, within 10 business days after making the referral—

(a) give the applicant a copy of—

(i) the notice mentioned in section 185(3)(a); and

(ii) if an objection notice was given—the objection notice and the submission to which the objection notice relates; and

(b) give any objector a copy of the notice mentioned in section 185(3)(a).

188 Objections decision hearing

(1) The Land Court may, of its own initiative, make orders or directions it considers appropriate for a hearing for the objections decision (the ***objections decision hearing***).

(2) However, the Land Court must make an order or direction that the objections decision hearing happen at the same time as a hearing for an application for the grant of a mining lease and any objections to the grant under the Mineral Resources Act, section 268 for the relevant mining tenure.

188A Striking out objection notices

(1) This section applies to the extent an objection notice is—

(a) outside the jurisdiction of the Land Court; or

(b) frivolous or vexatious; or

(c) otherwise an abuse of the process of the Land Court.

(2) Despite section 185(1), the Land Court may, at any stage of the hearing, strike out all or part of the objection notice.

189 Land Court mediation of objections

(1) At any time before the objections decision is made, any party to the proceeding may ask the Land Court to conduct or provide mediation for the objector's submission.

(2) The mediation must be conducted by the Land Court or a mediator chosen by the Land Court.

190 Nature of objections decision

(1) The objections decision for the application must be a recommendation to the administering authority that—

(a) if a draft environmental authority was given for the application—

(i) the application be approved on the basis of the draft environmental authority for the application; or

(ii) the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or

(iii) the application be refused; or

(b) if a draft environmental authority was not given for the application—

(i) the application be approved subject to conditions; or

(ii) the application be refused.

(2) However, if a relevant mining lease is, or is included in, a coordinated project, any stated conditions under subsection (1)(a)(ii) or (b)(i)—

(a) must include the Coordinator-General's conditions; and

(b) can not be inconsistent with a Coordinator-General's condition.

191 Matters to be considered for objections decision

In making the objections decision for the application, the Land Court must consider the following—

(a) the application;

(b) any response given for an information request;

(c) any standard conditions for the relevant activity or authority;

(d) any draft environmental authority for the application;

(e) any objection notice for the application;

(f) any relevant regulatory requirement;

(g) the standard criteria;

(h) the status of any application under the Mineral Resources Act for each relevant mining tenure.

192 Notice of objections decision

The Land Court must, as soon as practicable after the objections decision is made, give a copy of the decision to—

(a) the MRA Minister; and

(b) if a relevant mining lease is, or is included in, a coordinated project—the State Development Minister.

193 Advice from MRA and State Development Ministers about objections decision

(1) This section applies if the MRA Minister or State Development Minister is given a copy of the objections decision under section 192.

(2) The MRA Minister or State Development Minister must advise the administering authority about any matter the MRA Minister or State Development Minister considers may help the administering authority to make a decision under subdivision 4 about the application.

(3) The advice must be given within the period ending at the later of the following—

(a) 10 business days after the copy of the decision is received;

(b) if the relevant Minister and the administering authority have, within the 10 business days, agreed to a longer period—the longer period.

(4) In giving the advice, the MRA Minister or State Development Minister may seek advice from any entity.

(5) A contravention of this section does not invalidate—

(a) a decision made about an application under subdivision 4; or

(b) an environmental authority issued under division 4 for the application.

Subdivision 4 Final decision on application

194 Final decision on application

(1) This section applies if—

(a) the administering authority referred the application to the Land Court under section 185 and an objections decision is made about the application; or

(b) the administering authority referred the application to the Land Court under section 185 because of an objection notice but, before an objections decision is made about the application, all objection notices for the application are struck out or withdrawn.

(2) The administering authority must decide—

(a) if a draft environmental authority was given for the application—

(i) that the application be approved on the basis of the draft environmental authority for the application; or

(ii) that the application be approved, but on stated conditions that are different to the conditions in the draft environmental authority; or

(iii) that the application be refused; or

(b) if a draft environmental authority was not given for the application—

(i) that the application be approved subject to conditions; or

(ii) that the application be refused.

(3) The administering authority must make a final decision on the application—

(a) if the MRA Minister or State Development Minister is given a copy of the objections decision under section 192—within 10 business days after the end of the longer period within which either Minister must give advice relating to the application under section 193; or

(b) otherwise—within 10 business days after receipt by the authority of notice under section 182(4) that the last remaining objection notice for the application is withdrawn.

(4) In making the decision, the administering authority must—

(a) have regard to—

(i) the objections decision, if any; and

(ii) all advice, if any, given by the MRA Minister or the State Development Minister to the administering authority under section 193; and

(iii) if a draft environmental authority was given for the application—the draft environmental authority; and

(b) if a draft environmental authority was not given for the application—

(i) comply with any relevant regulatory requirement; and

(ii) subject to subparagraph (i), have regard to the following—

(A) the application;

(B) any standard conditions for the relevant activity or authority;

(C) any response given for an information request;

(D) the standard criteria.

Division 4 Steps after deciding application

195 Issuing environmental authority

If the administering authority decides to approve an application or makes a decision under section 170(2)(b) or 171(2)(b), it must issue an environmental authority to the applicant—

(a) if the application for the authority is referred to the Land Court under section 185—within 5 business days after a final decision is made under section 194(2); or

(b) if notice of the decision is given under section 181 and the application for the authority is not referred to the Land Court under section 185—within 25 business days after the notice is given under section 181; or

(c) if a development application is taken, under section 115, to also be an application for an environmental authority—

(i) if the administering authority is the assessment manager for the development application under the Planning Act—when the decision notice is given under the Planning Act for the development application; or

(ii) if the administering authority is a concurrence agency for the development application under the Planning Act—when the administering authority gives a copy of its concurrence agency's response to the applicant for the development application; or

(d) otherwise—within 5 business days after a decision is made under division 2, subdivision 2.

197 Inserting environmental authority in register

After an environmental authority is issued, the administering authority must include a copy of the environmental authority in the relevant register.